Supreme Court of the United States.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y., Plaintiff in Error, vs. DAVID W. EBAUGH, Defendant in Error.	October Term, 1900. No. 453. General Docket No. 17,938.

Comes said plaintiff in error and moves this Honorable Court to advance this cause upon the docket and hear it together with or on the same day as the case of the Eastern Building and Loan Association of Syracuse, N. Y., plaintiff in error, against Lawrence S. Welling and Marion Bonnoit, defendants in error, which is No. 190 of the calendar of the October Term, 1900, and No. 17,620 on the General Docket, and in support of said motion shows cause as follows:

I.

The Eastern Building and Loan Association of Syracuse, N.Y., is plaintiff in error in each case and is represented in each by the same counsel (Ebaugh Transcript, p. 70, fol. 105; p. 74, fol. 113; Welling & Bonnoit Transcript, p. 109, fol. 205; p. 113, fol. 215). The defendants in error in each case are members of and stockholders in said plaintiff in error (Ebaugh Transcript, p. 2, fol. 2; p. 6, fol. 8; p. 13, fols. 18, 19; Welling & Bonnoit Transcript, p. 5, fols. 8, 9; p. 10, fol. 18).

II.

Both cases are brought by writs of error to this Court from the Supreme Court of South Carolina (Ebaugh Transcript, p. 69, fols. 103, 104; Welling & Bennoit Transcript, p. 115, fols. 219, 220).

III.

The questions involved in each case, both of law and fact, are in several respects identical. In each case the certificates of stock of the Eastern Building and Loan Association held by the defendants in error were identical as to terms and provisions, especially in stating that the stock would mature in seventy-eight months from the date thereof (Ebaugh Transcript, pp. 10, 12, fols. 14, 17; Welling & Bennoit Transcript, pp. 47, 49, fols. 86, 90).

The defendant in error Ebaugh is suing to recover the maturity value of his stock under aforesaid provision in his stock certificate stating that the stock would mature in seventy-eight months (Ebaugh Transcript, pp. 2, 4, fols. 1, 5). The defendants in error Welling & Bennoit obtained a loan or advance of the maturity value of their stock by pledging their stock to the Association, giving as collateral security therefor a mortgage, the amount due thereunder being evidenced and secured by seventy-eight promissory notes. Said Welling & Bennoit, having paid said notes, claimed that the mortgage had been paid in full and sued to recover a penalty from the Eastern Building and Loan Association provided for by statute for a failure to satisfy said mortgages of record (Welling & Bennoit Transcript, pp. 2, 6, fols. 3, 12; pp. 7, 11, fols. 12, 20). In each case the defendants in error base their right of action upon the proposition that the statement of the time of maturity of the stock was a valid agreement upon the part of the plaintiff in error to pay the said maturity value of the stock at the end of 78 months from the date thereof. (Ebaugh Transcript, pp. 2–4, fols. 2–5; Welling &

Bonnoitt Transcript, pp. 2–4, fols. 3–7); In each case the Supreme Court of South Carolina held that the provision that the stock would so mature was a valid contract and binding upon the Association. (Ebaugh Transcript, pp. 67, 68, fols. 99–101; Welling & Bonnoit Transcript, pp. 97–101, fols. 183, 188).

By the laws and decisions of the State of New York upon which plaintiff in error relied and in which State the plaintiff in error is incorporated and has its principal office, the fixing of the time of maturity of stock in a building and loan association is merely an estimate upon the part of the Association of the time when its stock will mature. And any other construction of the contract between the Association and its members and stockholders, and of the terms of the stock certificates would make the contract of membership and the conditions of the stock certificates *ultra vires* of the Association, and void (Ebaugh Transcript, p. 2, fol. 2; p. 15, fol. 21; pp. 38–41, fols. 55–60; Welling & Bonnoit Transcript, p. 2, fol. 4; pp. 74–87, fols. 138–164).

In each case the contention of the plaintiff in error is that the Supreme Court of South Carolina should have determined and construed the rights of the defendants in error as members of and stockholders in the plaintiff in error under and pursuant to the laws and decisions of the State of New York. This it did not do, and so failing to do, plaintiff in error contends that it refused to give full faith and credit to the public acts, records and judicial proceedings of the State of New York and impaired the obligations of the contract between the plaintiff and defendants in error and denied to plaintiff in error the equal protection of the laws (Ebaugh Transcript, pp. 74, 76, fols. 113–117; Welling & Bonnoit Transcript, pp. 113–115, fols. 214–218).

IV.

Following is an abstract of the assignments of error in each case, which are placed in parallel columns

for the purpose of facilitating the comparison thereof:

Assignments of Error in the Ebaugh Case.	Assignments of Error in the Welling and Bonnoit Case.
1. The Supreme Court of South Carolina erred in refusing to give full faith and credit to the public acts, records and judicial proceedings of New York. Ebaugh Transcript, p. 84, § 1.	1. The Supreme Court of South Carolina refused to give full faith and credit to the public acts, records and judicial proceedings of New York. Welling and Bonnoit Transcript, p. 113, § 1; p. 115, § 7.
2. Said Court erred in upholding a rule of law established by the Courts of South Carolina which impaired the obligation of the contract in suit and deprived plaintiff in error of its property without due process of law. Ebaugh Transcript, p. 85, § 4.	2. The said Court erred in establishing a rule of law impairing the obligation of the contract between the parties hereto. Welling and Bonnoit Transcript, p. 115, § 7.
3. The Federal questions were saved by the exceptions, and the Court should have determined the contract relations between the parties in accordance with the articles of the Association, by-laws, stock certificate, application for membership and the laws and decisions of New York. Ebaugh Transcript, p. 86, § 9.	3. The Court erred in refusing to pass on the contract obligations of defendant in error entered into in New York and pursuant to the laws and decisions thereof. Welling and Bonnoit Transcript, p. 114, § 2.

4. Said Court erred in holding that the laws of New York did not forbid plaintiff in error from entering into a definite agreement that its stock would mature in 78 months.

Ebaugh Transcript, p. 85 § 7.

Said Court erred in holding plaintiff in error, a corporation organized under Chapter 122 of the Laws of 1851, of New York, was bound by an *ultra vires* agreement and could not be held to question or deny its liability therefor.

Ebaugh Transcript, p. 85, § 6, § 8.

4. Said Court erred in holding that the laws of New York were not binding upon the courts of South Carolina and did not enter into, govern and control the construction of the mortgage in suit. The defendants in error being members of and stockholders in plaintiff in error.

Welling and Bonnoit Transcript, p. 114, § 4.

Said Court erred in holding that the mortgage in suit was discharged and paid and thereby refused to give full faith and credit to the public acts, records and judicial proceedings of New York and impaired the obligation of the contract between the parties hereto.

Welling and Bonnoit Transcript, p. 114, §5.

5. Said Court erred in not determining the rights of defendant in error under the laws and decisions of New York.

Ebaugh Transcript, p. 85, § 6.

5. Said Court erred in changing the construction of Sections 1894 and 1895 of the revised statutes of South Carolina of 1893, and in applying them to a case where the payment and discharge of the mortgage was controverted and denied, said mortgage being only an element or incident in

the contract between the parties, said contract arising under and being controlled by the laws and decisions of New York.

Welling and Bonnoit Transcript, p. 114, § 6.

6. Said Court erred in holding that the decisions of the Courts of New York were not in conflict with its own construction of the contract in suit.

Ebaugh Transcript, p. 85, § 5.

6. Said Court erred in holding and deciding that " whatever may be the laws of New York we do not think they should be enforced in this State."

Welling and Bonnoit Transcript, p. 115, § 8.

Said Court erred in holding the law of New York to be (and conclusive in this case) that when a corporation enters into an *ultra vires* contract, it is bound thereby if it permits the other party to perform his agreement and receives the benefits and retains them.

7. Said Court erred in placing the same construction on the contract in suit as was placed on the contracts in certain cases cited in the opinion of the Court.

Ebaugh Transcript, p. 84, §2; p. 84, § 4.

7. Said Court erred in the application and in changing the settled construction of Sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893.

Welling and Bonnoit Transcript, p. 114, § 6.

V.

On the 21st day of January, 1901, counsel for the defendant in error Ebaugh submitted a motion made in behalf of the said defendant in error, praying for the dismissal of the writ of error herein, or the affirmance of the judgment of the Court below in this cause; and said motion having been duly considered this Honorable Court decided to render no decision thereon at once, but to continue said motion until the final hearing herein upon the merits, and to decide the same upon such hearing.

VI.

The said case of Welling and Bonnoit presents the question of the contract relations between plaintiff in error and its borrowing or advanced stockholders or members, in so far as such contract relations involve the maturity of stock and the discharge of mortgages at a fixed stock maturity period, while the said Ebaugh case presents the converse of said proposition, namely, the right of non-borrowing and non-advanced members to recover the par value of their stock without regard to its actual maturity at the estimated maturity period, and the federal questions arising upon and presented by the records in the two cases are identical.

VII.

A stipulation entered into by the respective counsel of the parties to this cause and agreeing to the advancement of same is hereto annexed as a part of the motion papers herein.

In view of the similar character of these two causes, as shown by the foregoing statement, and in view of the motion now pending in this cause, your petitioner prays that the motion to advance this cause and hear same, together with or on the same day as the cause of Eastern Building and Loan Association, of Syracuse, New York, plaintiff in

error, against Lawrence S. Welling and Marion Bonnoit, defendants in error, be granted.

Respectfully submitted,

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW YORK,
Plaintiff in Error.

By
WILLIAM HEPBURN RUSSELL and
WILLIAM BEVERLY WINSLOW,
Its Attorneys.

D. A. PIERCE,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y.,
Plaintiff in Error,

vs.

DAVID W. EBAUGH,
Defendant in Error.

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above entitled cause that said cause may be advanced upon the calendar and argued and heard upon the same day as the cause of Eastern Building and Loan Association of Syracuse, New York, plaintiff in error, against Lawrence S. Welling and Marion Bennoit, defendants in error, which latter cause is number 190 upon the calendar of the October Term, 1900, and number 17,620 upon the general docket.

IT IS ALSO AGREED that such order as may be necessary, and as the Court may deem proper, shall be entered upon this stipulation.

Dated February 9th, 1901.

WM. HEPBURN RUSSELL,
WM. BEVERLY WINSLOW,
Attys. for Plaintiff in Error.

W. H. LYLES,
H. J. HAYNESWORTH,
L. O. PATTERSON,
Attys. for Defendant in Error.

To WILLIAM H. LYLES,
H. J. HAYNESWORTH and
L. O. PATTERSON,
Attorneys for Defendant in Error Ebaugh.

To HENRY A. M. SMITH,
Attorney for Defendants in Error Welling and Bennoit.

You are hereby notified that the plaintiff in error in the above entitled cause will, on Monday the 4th day of March, 1901, on the meeting of the Supreme Court of the United States, in the City of Washington, District of Columbia, on that day, or as soon thereafter as counsel can be heard, submit for the consideration of the Court the foregoing motion.

WILLIAM HEPBURN RUSSELL and
WILLIAM BEVERLY WINSLOW,
Attys. for Plaintiff in Error.
Office and Post Office address,
253 Broadway,
New York City, N. Y.

EVENING POST JOB PRINTING HOUSE, NEW YORK.

STATE OF NEW YORK, } ss.: 1
County of New York, }

JOHN E. RUSTON, being duly sworn, deposes and says, that he is an attorney and counsellor at law of the State of New York, and is associated with Messrs. William Hepburn Russell and William Beverly Winslow, the attorneys for the plaintiff in error in the above entitled action.

Deponent further states that due and timely service of the foregoing notice of motion for the advancement of the foregoing cause so that it may be heard together with, or on the same day as the case of Eastern Building and Loan Association against Welling & Bonnoit, and due and timely service of the argument and of all papers upon said motion was made upon William H. Lyles, H. J. Haynsworth and L. O. Patterson, attorneys for defendant in error Ebaugh, and Henry A. M. Smith, attorney for defendants in error Welling & Bonnoit. Said service was made on the 9th day of February, 1901, by mailing in a sealed and post-paid envelope a typewritten copy of said papers to the addresses of said attorneys, to-wit: to William H. Lysles, H. J. Haynsworth and L. O. Patterson in the name of Haynsworth, Parker & Patterson, at Greenville, S. C., and to said Henry A. M. Smith, in the name of Mitchell & Smith, at Charleston, S. C. Said Mitchell & Smith acknowledged receipt of same by letter, dated February 11th, 1901, a copy of which is as follows: 2 3

"Messrs. RUSSELL & WINSLOW,
253 Broadway,
New York City.

DEAR SIRS:

We beg to acknowledge receipt from you to-day of the following typewritten papers, in the case of

4 the Eastern Building and Loan Association of Syracuse, Plaintiff in Error, *vs.* David W. Ebaugh, Defendant in Error, in the Supreme Court of the United States, No. 453, October Term, 1900—

1st. Argument and motion to advance said cause and have it heard together with the cause of the Eastern Building & Loan Association of Syracuse *vs.* Welling and Bennoit.

2nd. Unsigned stipulation between counsel in the case of Eastern Building & Loan Ass'n *vs.* David W. Ebaugh to such advancement and hearing together.

5 3rd. Notice that the above motion will be submitted to the Court on Monday, the 4th of March, 1901.

Yours very truly,
(Signed) MITCHELL & SMITH.

P. S.—The above typewritten papers to be regarded as printed."

The attorneys for the defendant in error Ebaugh have consented to the advancement of this cause, and will not oppose said motion.

Deponent further states that on the 14th day of February, 1901, service was made of the printed
6 copy of aforesaid papers by mailing same in a sealed and post-paid envelope to aforesaid attorneys at their respective addresses as aforesaid.

JOHN E. RUSTON.

Sworn to before me this 18th day of February, 1901.

WILLIAM H. MAGINNIS,
Notary Public,
N. Y. Co.

{NOTARY'S SEAL.}